

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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IN RE: NATIONAL PRESCRIPTION : MDL No. 2804  
OPIATE LITIGATION :  
:  
Case No. 1:17-md-2804  
:  
Cleveland, Ohio  
:  
APPLIES TO ALL CASES :  
:  
Thursday, August 2, 2018  
:  
9:15 a.m.  
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TRANSCRIPT OF STATUS CONFERENCE PROCEEDINGS  
HELD BEFORE THE HONORABLE DAN AARON POLSTER  
UNITED STATES DISTRICT JUDGE

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1 MORNING SESSION, THURSDAY, AUGUST 2, 2018

2 (Proceedings commenced at 9:15 a.m. )

3 - - -

4 DEPUTY CLERK: All rise.

09:15:35 5 THE COURT: Good morning. Everyone can be  
6 seated.

7 Welcome. We have a number of people present, and a  
8 number on the phone. I just want to -- I'll speak loudly  
9 and make sure everyone -- you like to stand, but if you're  
09:15:52 10 speaking, you need to sit down, stay seated and speak into  
11 the microphone.

12 Well, I guess this is a combination. We had a  
13 regularly scheduled sort of biweekly, triweekly discovery  
14 telephone conference at noon, and then the parties requested  
09:16:12 15 a conference with me, so we've combined them. So I  
16 appreciate the status report. It is thorough as always.

17 So why don't -- why don't the parties start with what  
18 you wanted to raise.

19 MR. WEINBERGER: Your Honor --

09:16:36 20 THE COURT: I've given a fair amount of  
21 thought to things.

22 MR. WEINBERGER: Your Honor,  
23 Peter Weinberger --

24 THE COURT: Yes, Peter.

09:16:40 25 MR. WEINBERGER: -- on behalf of the

1 plaintiffs. Good morning.

2 THE COURT: Good morning.

3 MR. WEINBERGER: I'm going to talk this  
4 morning a little bit about the current trial date, and I  
09:16:54 5 have some points that I want to make and some suggestions to  
6 the Court.

7 But before I begin my remarks, I think it's clear that  
8 all of the parties understand that the Court is very firm  
9 with this trial date in March of 2019. You've made that  
09:17:19 10 clear to us repeatedly.

11 And I know that the Court feels that maintaining the  
12 trial date will drive the parties towards resolution, and  
13 that resolution is the Court's highest priority to provide a  
14 solution to the opioid epidemic in this country.

09:17:39 15 I think I can speak for both sides in saying to you  
16 that we have worked diligently on the settlement front, and  
17 we are a long way from resolution. Particularly we've had  
18 discussions on behalf of the PEC with -- in collaboration  
19 with most of the Attorney Generals across this country, and  
09:18:05 20 we've had some significant discussions, particularly with  
21 the manufacturing defendants, including discussions within  
22 the last week or ten days.

23 The Court has recognized that litigation -- a  
24 litigation track was a necessary component towards meeting  
09:18:28 25 your settlement goals, and as part of that, the defendants



1 persuaded the Court to allow motions to dismiss to be filed,  
2 and the issues have been joined, and --

3 THE COURT: Well, I don't think I could have  
4 prevented motions -- anyone from filing a motion.

09:18:51 5 MR. WEINBERGER: Certainly.

6 THE COURT: So it's --

7 MR. WEINBERGER: At one point, you were  
8 discouraging it, but then --

9 THE COURT: I can discourage it. I can  
09:18:58 10 encourage it, discourage it. But I don't think I can  
11 prevent anyone -- it's a free country.

12 MR. WEINBERGER: Right.

13 THE COURT: And free courts.

14 MR. WEINBERGER: Well, just as importantly, in  
09:19:09 15 our mind, in achieving fruitful discussions, is the  
16 plaintiffs', the PEC's need on behalf of over 900 cities and  
17 counties and other nongovernmental entities to do the  
18 necessary document discovery to -- and once obtaining the  
19 documents -- to do targeted and efficient deposition work in  
09:19:34 20 this case, to do it expediently and effectively.

21 But in order to do that in, you know, complex  
22 litigation that's probably one of the largest this country  
23 has ever seen, we need to do it effectively by seeing at  
24 least some of the really important documents that we have  
09:20:01 25 not yet received.

1           And the reason why that's important to us, as we take  
2           on this immense fiduciary responsibility to the public  
3           entities that we represent, is because we need the documents  
4           and the testimonial evidence to provide the foundation for  
09:20:21 5           our liability, causation, and damage experts to be able to  
6           render expert opinions in this case. And we are not there  
7           yet, Your Honor.

8           The document flow -- and I'm not -- there's no blame  
9           here being cast on anybody, but the document flow,  
09:20:42 10           particularly from certain groups of the defendants, has been  
11           slow.

12           We have outstanding disputes, which the Court knows  
13           we've been dealing very effectively with, among ourselves as  
14           well as with the help of Special Master Cohen, and you have  
09:21:00 15           objections pending with -- before you with respect to  
16           Discovery Orders 2 and 3.

17           So what I'm about to propose is based upon discussions  
18           that we've had with the manufacturing defendants, and we've  
19           also had some discussions with the distributors, but have  
09:21:22 20           not reached any agreement as to a proposal. But we've had  
21           discussions, which have resulted in a compromise. We wanted  
22           an earlier date; they wanted later dates. But we came up  
23           with a compromise proposal -- which we would ask that you  
24           consider -- of starting the trial date sometime between  
09:21:50 25           July 29th and September 1st.

1           And as I said, there's not complete consensus, by any  
2 means. This is the result of discussions that we've had  
3 principally with the manufacturers, and every point along  
4 the way that we've had those discussions, we have -- we  
09:22:14 5 understand that first and foremost, it is your intent to  
6 hold the trial date.

7           And the purpose of this request is not to allow the  
8 litigators, hundreds of them on both sides, to pile up more  
9 time on this case.

09:22:36 10           Rather, we view -- well, I'll just speak on behalf of  
11 the plaintiffs. We view the ability to have the time to do  
12 limited additional discovery, document discovery and  
13 depositions, as an integral part of the Court's goal of  
14 moving the parties towards resolution.

09:23:10 15           And so that's why we asked to be able to be here  
16 before you, Your Honor. We think that these discussions are  
17 better had in person rather than over the phone. And I  
18 certainly -- we certainly are interested in the Court's  
19 reaction to this.

09:23:35 20           You know, we think we can, in a few additional months  
21 beyond this trial date, then work back with Special Master  
22 Cohen and in conjunction with all the parties to work out a  
23 schedule of deadlines that will move this case forward in an  
24 appropriate manner.

09:23:56 25           Thank you, Your Honor.

1 THE COURT: All right. Thank you, Pete.

2 Anyone else from the plaintiffs' side want to add  
3 anything? And then I'll turn to the defendants.

09:24:14

4 I figured you were the designated spokesperson, but I  
5 didn't want to preclude anyone else.

6 Okay. Mark?

7 MR. CHEFFO: Yes, Your Honor. Thank you. And  
8 thanks for kind of entertaining us here today. We do  
9 appreciate it.

09:24:25

10 I don't have much to add, because I think as Pete,  
11 Mr. Weinberger, indicated, this is essentially a compromise  
12 request from -- on behalf of a core group of defendants.  
13 I'm choosing my words, because, as you say, you know,  
14 there's a lot of defendants. Not everyone agrees exactly.  
15 Some people think it should be shorter, sooner. But I think  
16 it's fair to say that you have a core group of folks who  
17 are -- who think that this is very important to move the  
18 trial date as suggested.

09:24:44

19 I think -- you know, we both agreed that we would kind  
20 of talk in good faith. I know you've encouraged us to do  
21 that. As you see, all of us have gotten here today to not  
22 kind of quibble about discovery issues, right, and I take  
23 Pete's point. They have some concerns, we have some  
24 concerns. We think that moving it to as suggested does a  
25 few things:

09:25:17

1           It absolutely does not interfere with any ongoing  
2 resolution discussions. In fact, to some extent, I think  
3 the crush of these deadlines on both sides has made it very  
4 difficult and challenging, and in some regards, perhaps  
09:25:30 5 created some acrimony that's kind of maybe gotten in the way  
6 of some of our efforts.

7           The second is, you know, I think we all agree that  
8 while the Court obviously wants to press ahead, that the  
9 case needs to be prepared in the most kind of effective and  
09:25:47 10 efficient way on both sides, and having this modest  
11 extension of time, I think, will give the parties -- you  
12 know, assuming that we all continue to proceed in good faith  
13 and get everything done that we need to -- the ability to  
14 present the Court with, you know, a trial-ready case that, I  
09:26:03 15 think, will be benefited by some of the time.

16           You know, and as I said, I think that these are dates  
17 that are important to allow us to kind of move forward, and  
18 were the Court to entertain this and adopt it, we would work  
19 expeditiously with the plaintiffs and the other defendants  
09:26:21 20 and try to put in place some interim dates that -- I don't  
21 think we need to take up the Court's time today -- but I  
22 have a high level of confidence that we would do this in a  
23 way that the Court would be pleased and would avoid some of  
24 the interim disputes. There still will be some, but I think  
09:26:38 25 we can avoid many of them if we had a little more time,

1 Your Honor.

2 THE COURT: Okay. Thank you.

3 Anyone -- again, I figure, Mark, you're the designated  
4 spokesperson, but particularly since you said there was some  
09:26:54 5 disagreement -- anyone else from the defense side want to  
6 add anything, or any comments?

7 All right. Well, I've obviously been thinking about  
8 the same subject. I know everyone has been working  
9 extremely hard. It's clear that discovery cannot be  
09:27:22 10 completed by July 31st or August 1st, the current deadline.

11 The plaintiffs wanted to take 800 depositions. I  
12 trimmed you down to 420. I think I authorized, I don't  
13 know, 140 for the defendants. You've taken a handful, but  
14 they obviously can't be completed in a month, and this is a  
09:27:45 15 complex case.

16 I've got two concerns about your proposal:

17 First is, you know, that you're essentially suggesting  
18 a trial in August, and that's the hardest time to pick  
19 jurors because everyone is taking vacations, and I just  
09:28:08 20 don't -- I don't think I've ever started a complex trial in  
21 August in my 20 years on the Bench for that reason. So I  
22 don't think it's a great idea to start -- to do a trial in  
23 August.

24 Second, I think it is, not only desirous but  
09:28:31 25 appropriate, and I would almost say imperative, that if

1 there are any trials anywhere in the country, the first  
2 trial be in the MDL. And, again, that's not to slight any  
3 of my state court colleagues, but I just think that's the  
4 way it ought to be. The MDL is the center of this.

09:29:00 5 Everyone is looking to -- all of us -- to take the lead.

6 I've asked -- I've encouraged my state court  
7 colleagues to cooperate and coordinate so no one has to  
8 duplicate work, them or the lawyers, and I think they're  
9 expecting I'd have the first trial. If I were a state court  
09:29:21 10 judge, I would certainly expect that the MDL judge would  
11 have the first trial, if there are any trials.

12 There is one trial now set for April the 30th. It's a  
13 county case in West Virginia, and I appreciate every -- the  
14 status reports have been very good, because I've highlighted  
09:29:39 15 the trials that have been set. It's West Virginia versus  
16 McKesson. McKesson is the only defendant in that case.  
17 That's set for April 30th.

18 And then the State of California, on behalf of Santa  
19 Clara County and Orange County, has a big case, multiple  
09:29:58 20 defendants, set for June 18th. And, you know, I can't ask a  
21 state court judge to postpone his trial or her trial, so I'm  
22 reluctant to essentially what -- to start a trial that --  
23 you know, on Labor Day.

24 And then September 23rd, The State of Washington has a  
09:30:26 25 big case set.

1           So, I mean, did you -- did you talk about that?

2           Was that an issue in your discussions?

3           MR. CHEFFO: Your Honor, so I don't -- sorry.

4           I don't know that we've specifically talked about that  
09:30:42 5       with the plaintiffs, but, as you might expect, we -- you  
6       know, we understood that that might be a consideration for  
7       the Court, or likely would be. So here's what -- I guess I  
8       can't speak to the McKesson only case.

9           THE COURT: Right.

09:30:54 10          MR. CHEFFO: I think that, you know, the way  
11       the Court -- and I don't mean to be presumptuous -- would  
12       likely -- that you essentially would want to have the first  
13       case that has, you know, crosscutting issues, right? So to  
14       the extent there's a one state court case with one  
09:31:08 15       defendant, that would be different.

16          THE COURT: That one is a little different,  
17       Mark.

18          MR. CHEFFO: So the June case, here's what I  
19       would say about that, and just for the -- before you  
09:31:15 20       ultimately make a determination on this, because I know the  
21       Court is open minded about that, certainly, you know, I  
22       cannot represent that that date will move or, you know, is  
23       going to stay. I think there's a few factors that I would  
24       just suggest to the Court.

09:31:31 25       One is we have a new judge. We just had a call with



1 him yesterday. He has indicated, and I think the parties  
2 have indicated a willingness and a desire, and, in fact, how  
3 important it is to cooperate and coordinate with this Court.  
4 Obviously, he has his own issues. There are only  
09:31:46 5 distributors -- I'm sorry -- only manufacturers in that  
6 case, no distributors. It's a Bench trial.

7 I think most importantly is, you know, we have a  
8 discovery -- I think the next conference in that case is  
9 going to be to set some discovery in September. I believe  
09:31:58 10 that the Court has indicated -- I wasn't on the call  
11 yesterday, but there was a call yesterday. One of the  
12 issues was that the Court recognize that there was the 400  
13 depositions and that there would be some synergies, as you  
14 suggested, and benefits, and his desire not to reinvent, as  
09:32:13 15 all of the parties and I think any rational court would want  
16 to do.

17 So my suggestion, Your Honor, would be, if that is a  
18 significant impediment for the Court, while you, obviously,  
19 cannot direct Judge Wilson to change or move or keep his  
09:32:27 20 date, is that the Court would, perhaps, reach out to  
21 Judge Wilson -- because, as I said, he was just appointed  
22 last month. There was another judge who was in charge. It  
23 was reassigned to him, and, you know, I think everyone has  
24 recognized that -- I think Mr. Robinson, who I've worked  
09:32:41 25 with with other cases, is a, you know, a very fine lawyer,

1 he's indicated that, in fact, that discovery might go into  
2 the spring or the fall.

3 So to the extent that the Court's decision is at least  
4 influenced, if not more than that, by that June date, I  
09:32:57 5 would respectfully request that the Court have a  
6 conversation with Judge Wilson and determine if he would be  
7 willing to accommodate this Court's schedule.

8 I've agreed with the plaintiffs to ask and support a  
9 request for July 29th to September 1st. So September 1st is  
09:33:16 10 within the date that would kind of get us past the August  
11 issue that Your Honor has suggested. So I think it's all  
12 workable, and it's important. And even if there's another  
13 case in Washington -- again, I can't speak to every one of  
14 these cases -- but I think everybody in the country  
09:33:33 15 recognizes that Your Honor is going to be doing the lion's  
16 share of the work and everyone will benefit it.

17 So to the extent that you were to have a date on  
18 September 1st, or thereabouts, I think that it would still  
19 be consistent with what Your Honor is trying to achieve and  
09:33:50 20 would also give the parties what we need.

21 THE COURT: So the --

22 MS. SINGER: Your Honor. Your Honor.

23 THE COURT: -- Judge Wilson's case is just  
24 against the manufacturers and it's a Bench trial. So, what,  
09:34:04 25 it's like a public nuisance theory? There are no jury

1       claims?

2                   MS. SINGER:   Your Honor, Linda Singer.

3                   THE COURT:   Yes, Linda.

4                   MS. SINGER:   And I have been involved in the

09:34:13 5       Santa Clara case.   I would simply point out, and as  
6       Mr. Weinberger referenced, the proposal to this Court  
7       reflected a compromise among the parties.

8                   But I would simply note that the Santa Clara case was  
9       filed in May 2014, and so that is a case that has had a very  
09:34:30 10      long genesis.   It is, as the Court points out, a Bench  
11      trial.   It is a public nuisance claim, as well as consumer  
12      protection and false advertising claims under California  
13      law.

14                   THE COURT:   Well, Linda, it's four years ago.  
09:34:47 15      There hasn't been much action on the case, I take it?

16                   MS. SINGER:   There has been much action,  
17      little movement, Your Honor.

18                   THE COURT:   I should have -- that's -- okay.  
19      There hasn't been much discovery; is that --

09:34:59 20                   MS. SINGER:   That is correct.   There has been  
21      no discovery.   There have been multiple demurs.   In the  
22      California court, the case has moved through a number of  
23      judges, quite frankly, would stay for a period of time --

24                   THE COURT:   You mean my colleagues there  
09:35:13 25      weren't eager to hang on to the case?

1           No comments necessary.

2           MS. SINGER: Thank you. I appreciate that.

3           MR. REED: Your Honor, Steve Reed, if I may.

4           THE COURT: Yes, Steve.

09:35:25 5           MR. REED: So Teva is in that case, and I was  
6 on that call yesterday, and the purpose of that call was to  
7 address an *ex parte* motion that the plaintiffs had filed  
8 because they were not ready yet to participate in a  
9 deposition that was scheduled to be taken in this case and  
09:35:40 10 cross-noticed in that case.

11           I want to be fair when I say "they were not ready." I  
12 don't want to get into the merits of that argument. But the  
13 point was, that they were looking for more time to be  
14 prepared to take depositions, and the statements that  
09:35:52 15 Mr. Robinson made suggested that their discovery was going  
16 to take quite some time.

17           I respect Miss Singer, and I often agree with her, but  
18 she's incorrect when she says there's been no discovery.  
19 We've been producing documents there. The reason why that  
09:36:09 20 case has a four-year shelf life is in part because the Court  
21 had stayed the action and only relatively recently revived  
22 it.

23           But the judge, as Mr. Cheffo said, the judge was just  
24 reassigned last month. We had our very first conversation  
09:36:28 25 with him about the case yesterday. We're going to be

1 talking in more detail with him on September 6th. He  
2 obviously is the master of his calendar and will decide when  
3 the trial is going to go forward.

4 But there was every indication on that call that he  
09:36:41 5 would be looking to coordinate with Your Honor, and my view  
6 is that he would be receptive to a call with you or  
7 Special Master Yanni if the trial date is being driven, in  
8 part, by his.

9 THE COURT: All right. Well, again, it's --  
09:36:57 10 his case is not as extensive in terms of it only --  
11 obviously, it can't encompass a lot of the legal theories.  
12 So I -- you know, I don't have any power or desire to direct  
13 any state court judge what to do.

14 I may reach out to Judge Wilson if I decide to  
09:37:22 15 postpone this trial and tell him what I've done, and, you  
16 know, tell him, Look, if you want me to be the first, you  
17 can move your trial back. If you want to be the first in  
18 the country, well, that's -- he's got a right to do it.

19 Well, I had contemplated moving the trial back, but  
09:37:45 20 not that far. But if that's the -- you know, this is  
21 what --

22 I also want to say this: It was not my idea or desire  
23 to have this litigation track, because I knew how expensive  
24 it would be, but more important, you know, I don't think  
09:38:11 25 it's going to accomplish much.

1 I mean, you know, Pete, and Paul, and Paul, I assume  
2 you're going to try very hard win this trial, right, and --  
3 whenever it is, March, August, September, whenever it is,  
4 right?

09:38:31 5 MR. WEINBERGER: Yes, Your Honor.

6 MR. HANLY: Yes, Your Honor.

7 THE COURT: Okay. Obviously. What do you  
8 think will happen if you win?

9 MR. WEINBERGER: Well, one of two things:  
09:38:42 10 It --

11 One of two things: It will drive the parties toward  
12 the resolution table, or there will be an appeal.

13 THE COURT: Well, it will be appealed no  
14 matter -- they'll -- it will be appealed.

09:38:57 15 But this is my prediction: If you were to win --  
16 remember, your clients are not -- this is not the typical  
17 MDL where the plaintiffs are a disparate group of  
18 individuals around the country who -- you know, they're just  
19 individuals, all right, and candidly, in those cases, the  
09:39:19 20 lawyers drive the train. I know that. I've been around.

21 Your clients are not a disparate group of individuals.  
22 They are elected, political officials. They are mayors of  
23 cities, they are county executives and/or county  
24 commissioners.

09:39:39 25 On the stateside, they're State Attorneys General, all

1 right? They have constituencies. And my prediction is, if  
2 you were to win, every other mayor, governor, attorney  
3 general, county executive, is going to say, Not only is my  
4 case worth as much as Cleveland or Akron or Cuyahoga County  
09:40:05 5 or Summit County, but it's worth more because of this, this,  
6 and this, and there wouldn't be enough money in the world to  
7 settle it, and there's no way that the cases could be  
8 resolved because those officials couldn't resolve it for a  
9 realistic and fair amount politically.

09:40:24 10 So if you win, the result is that we're going to be  
11 trying -- I won't, because I can only try the handful in the  
12 Northern District of Ohio. I will have to send these  
13 thousand cases around the country to all of my colleagues,  
14 and they'll be trying these things long after all of us have  
09:40:46 15 retired. So while you want to win, you don't want to win.

16 And that's equal the problem with the defendants,  
17 because, you know, if the plaintiffs win, you got to go to  
18 the mat against every city, county, state, and ultimately,  
19 the federal government, and your clients are regulated -- in  
09:41:12 20 a regulated industry. And guess what? You go to war with  
21 every government in this country, you're not going -- your  
22 clients won't be around. Maybe Walmart will, but no one  
23 else will be.

24 So everyone is going to go into bankruptcy, and then  
09:41:28 25 no one gets money other than bankruptcy lawyers. So -- and

1 if the defendants win, plaintiffs will say, you know, All  
2 right. We'll just keep trying one until we win. And, of  
3 course, you will win some.

4 So that's why I didn't want this litigating track.  
09:41:47 5 That's why in my other MDL I kept having bellwethers and  
6 they all settled right -- some of them on the midnight  
7 before trial.

8 It was your group, Pete.

9 And I finally figured out after three years what was  
09:42:03 10 happening. So I didn't want this litigating track. The  
11 defendants insisted they wanted to file all these motions.  
12 I said, All right. We're not going to just do it in the  
13 abstract. There will be concrete cases and we'll proceed to  
14 trial.

09:42:14 15 So what I'm strongly requesting is that all these  
16 great lawyers which we have -- who we have in this room and  
17 on the phone, start exercising some client control.

18 On the plaintiffs' side, your clients who represent  
19 most of the citizens in this country want and need two  
09:42:39 20 things: They want us collectively to implement the  
21 procedural reforms, which everyone has been working very  
22 hard over the last number of months to put together.

23 I know with the PEC and the AGs and the manufacturers,  
24 those are pretty much in place, all right? And they're not  
09:43:04 25 quite as far along with the distributors, but it's getting



1 there. And implementing those procedural reforms will do a  
2 tremendous amount to reduce the number of people who are  
3 getting addicted, which is the best thing.

4 All right. So cities, counties, states, the public,  
09:43:25 5 that's what they need, and so do those people. It will save  
6 them from getting addicted.

7 And then, of course, we need to come up with some  
8 amount of money -- it's not going to solve it or  
9 provide -- we're not talking about all the money necessary  
09:43:39 10 for drug treatment, but some meaningful amount to help treat  
11 the people who are addicted so that they don't die. Because  
12 if we wait five or ten years until we try a bunch of these  
13 cases and it goes up to the Sixth Circuit and then the  
14 U.S. Supreme Court, guess how many people are going to die.  
09:44:00 15 You just keep multiplying the 40-, 50,000 a year who are  
16 dying now. Because everyone knows that if you're a drug  
17 addict and you're on street drugs, you're playing Russian  
18 roulette every day. So that's what's needed.

19 So, you know, all this discovery and depositions and  
09:44:20 20 whatever, and a trial, will accomplish zero. But I know it,  
21 and you know it, and I think you've got to, again, exercise  
22 some client control.

23 But I have no problem moving the case back. Again, I  
24 just don't think it makes sense to try and -- it's going to  
09:44:39 25 be hard enough picking a jury in this case, but to try and

1 pick it in August is impossible.

2 So I -- what I'm considering -- I looked at the  
3 calendar.

09:45:16

4 September 1st is a Sunday. We're obviously not  
5 starting on a Sunday.

6 September 2nd is Labor Day.

7 Potentially, we could do it -- start September 3rd.

8 MR. SHKOLNIK: Your Honor.

9 THE COURT: September 3rd.

09:45:26

10 MR. SHKOLNIK: Your Honor, if I could be  
11 heard.

12 Your Honor, if I could be heard.

13 THE COURT: Yes.

14 MR. SHKOLNIK: Hunter Shkolnik. Do you want  
15 me to go to the podium?

09:45:31

16 THE COURT: Yes, Hunter.

17 MR. SHKOLNIK: I didn't want to interrupt the  
18 conversations, but given the time that we're talking about  
19 in September, especially we know the holidays, September 3rd  
20 would be the earliest, we have -- for many attorneys and  
21 many clients as well -- and I've been focusing primarily on  
22 representing Cuyahoga County -- but there are Jewish  
23 holidays in that time frame.

09:45:48

24 THE COURT: Well, I looked.

09:46:04

25 Rosh Hashanah doesn't start until September -- I've

1 got it September 29th. I looked it up.

2 MR. SHKOLNIK: Okay. I just wanted to make --  
3 I didn't have a chance to look at a calendar --

4 THE COURT: Well, I did --

09:46:08 5 MR. SHKOLNIK: -- if that is a scheduling  
6 issue.

7 THE COURT: -- because, obviously, I don't  
8 want to -- I looked, and according to my calendar, it starts  
9 Sunday, September 29th.

09:46:08 10 MR. SHKOLNIK: I must not have --

11 THE COURT: So that gives -- so that gives --  
12 you know, again, I said a three-week trial, and I meant  
13 that.

14 I mean, by then, you know, obviously, we're not going  
09:46:29 15 to have 20 or 30 defendants. Many will settle. Some will  
16 be dismissed. Some will file for bankruptcy. The  
17 plaintiffs are going to streamline this case. They're  
18 obviously not going to try all the theories in a 200-page  
19 complaint. But I meant it. It's going to be a three-week  
09:46:51 20 trial. So that means we'll be completed before the Jewish  
21 holiday.

22 So I could -- you know, I suppose I could start the  
23 trial on, you know, August 26th or 27th, too. I mean, so  
24 I'm -- you know, either the last week of August or the day  
09:47:13 25 after Labor Day. I don't have a -- I don't have a problem

1 with that. And we can, you know, adjust the schedule  
2 accordingly.

3 I will say this: That, you know, in terms of Daubert  
4 motions, everyone knows it's virtually impossible to get an  
09:47:37 5 expert disqualified. I don't think either side is going to  
6 propose experts or theories that are junk science. You are  
7 all experienced lawyers. You're not going to push the  
8 envelope out.

9 I don't think I've ever actually completely  
09:47:53 10 disqualified an expert. What I have done is when an expert  
11 sort of strayed from his or her field of expertise, I've  
12 cabined the opinion to just that, the expertise that that  
13 person is qualified to give, that part of the opinion.  
14 But -- so people can save a lot of trees.

09:48:13 15 Also, in terms of summary judgment motions, I'm  
16 dealing with these legal issues now, and the theories that  
17 go forward are going to go forward, and I'll let the jury  
18 decide what the facts are.

19 So, you know, I'm going to focus -- if we have the  
09:48:30 20 trial -- focus on trying the case and have intelligible jury  
21 instructions. So I'm directing both sides to be very  
22 sparing with their dispositive motions.

23 So I -- again, I had thought, in my mind, that there  
24 was clearly a necessity to postpone, move the trial back at  
09:48:53 25 least a couple of months, but this is substantially longer.

1 But I want to be fair to both sides. If we have a trial, I  
2 certainly want both sides to be prepared, and no one to say,  
3 Well, we didn't have enough time to prepare our case or our  
4 defense. That doesn't help, and then it's a real waste --  
09:49:12 5 or we didn't have time to do adequate discovery on either  
6 side.

7 So, I mean, why don't you all confer. I'm not -- you  
8 know, the last week of August or the day after Labor Day.  
9 Obviously, if we start the last week of August, we're off on  
09:49:28 10 Labor Day, so I'm not sure that's a great idea. Some people  
11 might be on vacation. So it may be best to do it September  
12 the 3rd. That gives -- that gives plenty of time, you know,  
13 even for jury deliberations before the Jewish holidays.

14 So why don't you all confer and, you know, come up  
09:50:01 15 with a new schedule. I'll obviously look at it. But if  
16 that's the consensus, then, I don't have a problem with it.

17 But, again, I -- the -- by doing this, I don't want to  
18 be essentially encouraging the parties to spend all their  
19 efforts on this litigating track, because that is going  
09:50:26 20 to -- you know, it is -- not only isn't going to solve  
21 anything, I think it's going to make resolution virtually  
22 impossible.

23 And, again, you know, an MDL judge, I only have  
24 jurisdiction over a handful of cases in the Northern  
09:50:42 25 District of Ohio. I mean, if I try a case and that doesn't

1 produce a settlement, I'm just going to have to send the  
2 other thousand or so around the country. Guess what? You  
3 know, you think that's going to be helpful for resolution,  
4 to have, you know, 400 different judges with this, plus 200  
09:51:01 5 state court judges? That would be the end of the MDL, and  
6 at that point, you know, any opportunity will be lost.

7 So that would be an absolute insanity. But, again,  
8 that's the law. I only have jurisdiction over the hand- --  
9 to try the handful of ones here, and I've got the four main  
09:51:19 10 ones in terms of the public entities.

11 So I want everyone to be mindful of that, and,  
12 obviously, I'm going to be actively working on the  
13 settlement track with my three expert Special Masters, as I  
14 have been doing.

09:51:34 15 All right. And then what -- I've carefully read, you  
16 know, Special Master Cohen's discovery orders in Opinions 2  
17 and 3. I've read everyone's objections. I think he did a  
18 very good job balancing things. The main objection that  
19 everyone had on the defense side was there is no way that we  
09:52:04 20 could get that discovery completed, let alone get it  
21 completed and prepare our witnesses and meet the schedule  
22 that we've got.

23 Well, the schedule is now moved back several months,  
24 so that allows a whole -- a number of months more to both  
09:52:24 25 produce the documents, prepare your witnesses, and have them

1       deposed.

2               So I think his -- the balance he struck was a pretty  
3       good one, and so I'm going to overrule all of the  
4       objections, and many of them are moot.

09:52:44 5               And there were a few -- in a few cases, the  
6       plaintiffs, in their filings, conceded they would make some  
7       additional limitations, and they've done that. So those  
8       are -- those are in place.

9               But, again, the main argument behind the objections  
09:53:04 10       was the time, and we've taken care of that. So many of them  
11       are moot, and the rest I'm going to overrule, and we'll  
12       leave those -- we'll leave that in place.

13               Obviously, the plaintiffs are mindful -- they're  
14       spending their time and money, and they're not going to take  
09:53:23 15       420 depositions if they don't need them, and --

16               But this is a very complex case. The problem began  
17       more than 20 years ago, and while I'm not sure, you know,  
18       you're going to find dramatically useful evidence 20 years  
19       ago, it's possible you might in some cases. So I'm not  
09:53:50 20       going to, you know, just say you can't try and see if maybe  
21       there's something that would resinate with a juror from 20  
22       years ago.

23               So I think that covers that subject.

24               So I think we're pretty well concluded, other than  
09:54:13 25       usually at the end I set a time for our next -- I guess

1 we've been calling them discovery telephone conferences,  
2 and -- but we've generally been doing them two, three weeks  
3 apart, and I think that's a good idea. Sometimes there's  
4 not a lot to say, but, I mean, I did it with my last MDL. I  
09:54:36 5 thought it was useful to have them.

6 So I'm thinking three weeks rather than two, unless,  
7 you know, people think something critical is likely to occur  
8 in two weeks.

9 What do you -- what do you think?

09:55:37 10 MR. HANLY: Judge, for the plaintiffs. I  
11 think three weeks would be preferable to two weeks. The  
12 two-week time frame seems to come upon us --

13 THE COURT: Well, that's the thing, and while  
14 it may create more work -- the idea wasn't to create work  
09:55:51 15 for people. It was to have a regular -- just to touch in,  
16 and so if there are issues, that they get dealt with in a  
17 timely way, but -- so let's look at --

18 SPECIAL MASTER COHEN: Judge?

19 THE COURT: Yes.

09:56:03 20 SPECIAL MASTER COHEN: I know that we have  
21 meetings scheduled with you on August 23rd and 24th.

22 THE COURT: Right.

23 SPECIAL MASTER COHEN: I think maybe we can  
24 combine them.

09:56:12 25 THE COURT: Well, that's what I was thinking.



1 That's what I was thinking, which is about three weeks. And  
2 so a number of people are going to be here, and so that  
3 makes things efficient. So -- and these are generally  
4 pretty quick. So maybe at noon on Thursday, the 23rd, which  
09:56:33 5 is three weeks from today.

6 How does that sound?

7 MR. HANLY: It's fine with us, Judge.

8 MR. CHEFFO: Yes, Your Honor. That sounds  
9 good. Thank you.

09:56:43 10 THE COURT: And, again, a number of people are  
11 going to be here that day, so that makes it efficient.

12 Okay. We'll send call-in instructions. The people  
13 who are here, obviously, will do it in person. The people  
14 who aren't can call in on the phone.

09:57:03 15 Okay. Anything else that anyone wanted to raise?

16 I know there's an agreement that we wouldn't raise  
17 additional subjects, but there may be something on these  
18 subjects that I haven't covered.

19 Again, I want to -- you know, I know everyone has been  
09:57:19 20 working extraordinarily hard on both the settlement track  
21 and the litigating track. A lot of the work -- the main  
22 work is done by the people on the phone, but there's hard  
23 work being done by people who aren't on the phone, the  
24 lawyers, the clients.

09:57:37 25 And, obviously, Judge Ruiz is working extremely hard

1 and my Special Masters and my staff, too, to keep up.

2 Okay.

3 ALL: Thank you, Your Honor.

09:58:05

4 THE COURT: Well, maybe I think -- is a week  
5 sufficient to -- for you to come up with a revised schedule  
6 and submit it to me? And then I'll just take a look at it  
7 and make sure that any hearing dates work out.

8 MR. HANLY: Yes, that's fine, Your Honor.

09:58:20

9 MR. CHEFFO: I think that should be fine,  
10 Your Honor.

11 It's a week from today, Your Honor; is that right?

12 THE COURT: Right. Why don't we just say by  
13 noon a week from today, so that's the 9th.

14 Okay. Thank you.

09:58:35

15 ALL: Thank you, Your Honor.

16 - - -

17 (Proceedings adjourned at 10:00 a.m.)

18

19 C E R T I F I C A T E

20

21 I certify that the foregoing is a correct transcript  
22 from the record of proceedings in the above-entitled matter.

23

24 /s/ Donnalee Cotone 7th of August, 2018  
25 DONNALEE COTONE, RMR, CRR, CRC DATE  
Realtime Systems Administrator